IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WA.No. 42 of 2007(E)

AGAINST THE JUDGEMENT IN WPC.25122/2006 Dated 13/12/2006
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APPELLANT: PETITIONERS:
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1. K.P. CHANDRAN,
   HIGH SCHOOL ASSISTANT, K.R.HIGH SCHOOL,
   PATHIRIYAD, KANNUR DISTRICT.

2. E. VALSAN,
   HIGH SCHOOL ASSISTANT, K.R.HIGH SCHOOL,
   PATHIRIYAD, KANNUR DISTRICT.

BY ADV. SRI.P.V.JYOTHI PRASAD

RESPONDENTS: RESPONDENTS:
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1. V.M. GANGADHARAN,
   HEADMASTER, K.R. HIGH SCHOOL, PATHIRIYAD, KANNUR.
2. THE MANAGER,
   K.R. HIGH SCHOOL, PATHIRIYAD, P.O. SANKARNELLUR,
   KANNUR.
3. DISTRICT EDUCATIONAL OFFICER,
   THALASSERY.
4. STATE OF KERALA,
   REP. BY SECRETARY TO GOVERNMENT,
   GENERAL EDUCATION DEPARTMENT,THIRUVANANTHAPURAM.

BY ADV. SRI.K.T.SHYAMKUMAR
SRI.V.RAJENDRAN
GOVERNMENT PLEADER SHRI. SANDESH RAJA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 6/03/2007, THE COURT ON 13/3/2007 DELIVERED THE
FOLLOWING:

P.R. Raman & Antony Dominic, JJ.

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W.A.No.42 of 2007

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Dated this the 13th day of March, 2007.

JUDGMENT

Antony Dominic,J.

Appellants had filed the Writ Petition seeking to quash Ext.P2 and to direct respondents 2 and 3 to promote the first appellant as Headmaster with effect from 1.4.2006 and the second appellant from 1.4.2007. The facts which led to the filing of the Writ Petition are that the first respondent had entered into service of K.R. High School of which the second respondent is the Manager, on 8.6.1976. On the basis of the date of birth as originally entered in the service records, he was to attain the age of superannuation on 5.2.2006 and to retire from service, on 31.3.2006, at the end of the academic year. It is stated that by Ext.P3 dated 30.3.1988, he got sanction of the Commissioner for Govt. Examinations as per Rule 3 of Chapter VI of the Kerala Education Rules to correct the date of birth from 6.2.1951 to 23.7.1952 in the school records and qualification certificates issued to him. On the strength of Ext.P3, on 6.3.1998, he is stated to have made an application to correct his date of birth in the service records,

which was rejected by the Government as per Ext.P4 dated 10.1.1994. He pursued the matter and sought a review of the same, which was also rejected by the Government as per Ext.P5 order dated 10.2.1998.

2. Aggrieved by Exts.P4 and P5, he filed an Original Petition before this Court as O.P.No.11343 of 1998, which was disposed of by Ext.P6 judgment, directing the respondents to correct the service book of the first respondent as per the correction carried out in the S.S.L.C. Book. It is stated that the State of Kerala, the sole respondent in the Original Petition, appealed against Ext.P6 judgment by filing W.A.No.2690 of 2006, which was disposed of by Ext.P7 judgment, setting aside Ext.P6 judgment and directing as follows:

> "However, since the impact of the correction had not been noticed of (sic by) the Government appropriately, and since the application for correction made by the petitioner was within time stipulated by Government orders, we direct that further orders are to be passed in the matter if petitioner submits a representation directly to the Government within a period of one month from today with all supporting documents. In that case, the representation is to be disposed of as far as possible, within a period of three months from date of its receipt".

3. As already noted, the first respondent had attained the age of superannuation, going by the date of birth as originally entered in the service records, on 5.2.2006 and by the time Ext.P7 judgment was

rendered on 14.2.2006, he was continuing in view of the statutory provisions governing him. Pursuant to Ext.P7, the first respondent submitted representations dated 27.2.2006 and 24.3.2006. Considering the representations so made, the Government passed Ext.P2 order dated 30.3.2006, according sanction to correct the date of birth of the first respondent as 27.3.1952 instead of 6.2.1951 in his service book and other records.

4. In view of the correction of the date of birth as ordered by the Government by Ext.P2, the chances of the appellants for promotion as Headmasters as they would be attaining the age of superannuation before the first respondent were lost. It is in view of this that they felt aggrieved and filed the Writ Petition seeking the reliefs mentioned earlier.

5. The learned single Judge heard the Writ Petition and after taking note of the judgment rendered by the Supreme Court in the case of **Devki Nandan Verma** v. **State of Haryana and another** – 1995 Supp (3) S.C.C. 431 held that the appellants had no locus standi to challenge Ext.P2 and on that basis dismissed the Writ Petition.

6. Counsel for the appellants submitted that based on the date of birth as initially entered in his service records, the first respondent was deemed to have retired on 5.2.2006 and therefore, the

representation, which led to Ext.P2, having been made subsequent thereto, it was not open to the Government to allow correction of his date of birth in the service records. It was also submitted that at any rate, correction of the date of birth ought not have been allowed at the fag end of the service of an employee.

7. The learned single Judge applying the law as laid down in the decision in **Devki Nandan Verma** v. **state of Haryana and another** – 1995 Supp (3) S.C.C. 431, held that the appellants do not have locus standi to maintain a Writ Petition challenging correction of the date of birth of another employee. Though the counsel for the petitioners attempted to distinguish the judgment, we have gone through the judgment and find that the law as laid down in the aforesaid judgment applies on all force to the facts of this case. That was also a case where consequent on the correction of the date of birth allowed in favour of a person, chances of promotion of other persons were affected. In such a case, the Supreme Court held as follows:

> "We have heard learned counsel for the parties. The High Court quashed the order correcting the date of birth of the appellant on the ground that an opportunity of hearing should have been given to the petitioner before any order changing the date of birth of the appellant could be passed by the State Government. We are at a loss to understand as to how and on what logic the High Court

> imported the rules of natural justice in a matter where it has no relevance at all. The least we can say is that the High Court fell into patent error almost bordering perversity in interfering with the order dated 18.6.1992 on the ground that it should have been passed after hearing the affected persons. When correction regarding date of birth is made in the service record of a person the State Government is doing what is required under law. A person has a right to continue in service till he attains the age of superannuation. When wrong date of birth is entered in the service record the right of the person to remain in service till superannuation is obviously infracted. Rectification of the date of birth is a matter between the person concerned and the State Government and no other person has locus standi to prefer a caveat in such a matter."

In the light of the law as laid down by the Supreme Court, we cannot accept the submission of the counsel for the appellants and therefore we concur with the view taken by the learned single Judge. Even otherwise, the view taken by the learned single Judge being a plausible one, it cannot be upset in an appeal even if, a different view is possible.

8. Since the counsel for the petitioners contended on the merits of the case as well, we proceed to deal with that contention as well. It is true as pointed out by the counsel for the petitioners, but for the

correction effected by Ext.P2, the date of birth as originally entered in the service records would have governed by the prospects of the first respondent and he would have attained the age of superannuation on 5.2.2006 and retired from service on 31.3.2006. Following Exts.P4 and P5, when he filed O.P.No.11343 of 1998 this Court allowed the Original Petition and directed correction of his date of birth. When the State Government challenged the judgment, the Division Bench taking note of the circumstances, directed that since the application for correction made by the first respondent was within the time stipulated by the Government Orders, further orders were directed to be passed, if a fresh representation was directly made to the Government within the time as specified in the judgment. It is in pursuance to the direction of the Division Bench of this Court that the first respondent submitted representations dated 27.2.2006 and 24.3.2006, referred to in Ext.P2.

9. When this Court directed that the issue relating to his claim for correction of date of birth be considered, the appellant in Ext.P7 judgment, the State Government, was obliged to consider the merits of the claim and they could not have rejected the representations on the technical ground of delay. Therefore, as it was the duty of the Government to consider the merits of the claim raised by the first

respondent, the decision rendered by the Government on the representations so made, cannot be faulted. If that be the correct approach, we fail to appreciate the contention of the counsel for the appellants that the representations having been made after 5.2.2006, ought not have entertained by the Government. In this context it is to be remembered that even Ext.P7 judgment was rendered by the Division Bench only on 14.2.2006 which is well beyond 5.2.2006. Even otherwise although it is the normal rule that the date of birth recorded in the service book cannot be corrected at the fag end of the career of an employee, there are exemptions as in this case, where the application for correction was made well within the time specified for that purpose. Thus, the contention that correction should not have been allowed at the fag end of the service of the first respondent also has no merit.

In the circumstances, we find no merit in this Writ Appeal and the appeal will stand dismissed. No costs.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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